IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1568 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
PATEL RAMESHBHAI CHATURBHAI & ORS

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Appearance :
MR DIPEN A DESAI APP for Appellant
MR JB PARDIWALA for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/12/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and order delivered by the learned Special Judge (Atrocity), District - Mehsana, on 30th of September, 2004, in Special (Atrocity) Case No. 33 of 2004, whereby present respondents, being accused of the said Atrocity Case, came to be acquitted by the Trial Court, for the charges levelled against them under Sections 323, 504, 506(2) to read with Section 114 of the Indian Penal Code as well as under Section 3(10(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Learned APP Mr. Dipen A Desai for the appellant State was heard. Leave to Appeal granted. Appeal is Admitted. Learned Advocate Mr. Divyesh Joshi, for learned Advocate Mr. J.B. Pardiwala, waives service of notice of Admission on behalf of respondents. Learned APP Mr. Dipen Desai, for the appellant - State and learned Advocate Mr.Divyesh Joshi, for the respondents requested this Court to take up this matter for final hearing as the record and proceedings of the Trial Court is available with the Court and it is further submitted that they shall provide extra copies of evidence as well as necessary documents produced before the Trial Court for hearing. In the facts and circumstances of the case, request is granted and the matter is taken up for final hearing.

3 According to prosecution case, complainant Kantibhai Chavada, offered his complaint to Bavla Police Station at about 18.30 hours on 20th of April, 2004. Accordingly, on 20th of April, 2004, there was voting booth for the Parliament election which was arranged in primary school building of the village. Complainant had been to first number booth for casting his vote. The complainant and one Patel Mahendrabhai Kalubhai entered into some exchanges about voting and he was forbidden to cast his vote and, hence, the complainant came out of the booth. Thereafter at about 14.00 hours, all the four accused accosted the complainant near Dhoodh Sagar Dairy and he was insulted by his caste. According to prosecution case, the complainant was abused by the accused and on shouting by the complainant, Chavda Natvarbhai Ranchodbhai, Patel Kanubhai Baldevbhai and Vihol Nanji Joruji, all the three persons, came out at the spot to rescue the complainant from fists and kicks being given by the accused. On coming all these persons at the spot, the accused left that place but threatened that the complainant would be done to death.

4 A crime came to be registered from the above complaint and charge sheet came to be filed in the Court of learned Magistrate, which was registered as Criminal Case No. 478 of 2004. The learned Magistrate committed the above case to the Court of Sessions. Being

special case, the Trial Court framed the charges against all the accused vide Exhibit – 11 on 25th of August, 2004, wherein each of the accused pleaded not guilty. The prosecution thereafter examined four witnesses i.e. complainant Kantibhai Jeevabhai Chavada; two eye witnesses - Nankaji Merubha Vihol and Natvarbhai Ranchhodbhai Chavda and finally Investigating Officer Dy. S.P. Dave Sureshkumar Kantilal. The prosecution also placed on record necessary documentary evidence. Evidence being over, statements of each of the respondents under Section 313 of the Code of Criminal Procedure was recorded by the Trial Court, wherein their defence was of total denial and, therefore, the learned APP and defence Lawyer were heard in detail by the Trial Court and thereafter vide judgment and order impugned in this Appeal, the respondents came to be acquitted for the charges levelled against them. Hence this Appeal.

5 We have gone through the record and proceedings carefully, even at this stage as the record and proceedings of the Trial Court is available with us. We have scrutinized the reasons assigned by the Trial Court acquitting the respondents and it appears from re-appreciation of the evidence that so far as the offences punishable under Sections 323, 504 and 114 of the Indian Penal Code is concerned, the parties executed a compromise at Exhibit 25, which was recorded by

the Trial Court and the accused were acquitted in respect of the said charges and the Trail Court proceeded thereafter for the offence punishable under Section 506(2) of the Indian Penal Code and for the offence punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6 In this respect, we have re-appreciated the evidence of the complainant and two eye witnesses. Though the complainant attempts to stick to his complaint filed and produced on record at Exhibit – 23, but he has been cross-examined by the defence. What appears to us on probability of the case that, at first instance, if the complainant was prevented from casting vote, he failed to file any complaint with the higher officials. It is on record that in the village there were two political parties and more so the complainant is not supported by the eye witnesses in respect of allegation of insulting the caste of the complainant and threat given by the accused to kill the complainant. Both the eye witnesses Vihol Nankaji Merubha, Exhibit – 28 and Chavda Natvarbhai Ranchhodbhai, Exhibit – 29 stated before the court that there were some altercations between the complainant and the accused but not as to the insults of the caste of the complainant and threat to kill. Though these witnesses are declared hostile and have been examined by the prosecution but nothing fruitful is found from

their evidence. Thus, the case hinges upon the sole evidence of the complainant in respect of remaining two allegations about insulting caste and threats by the accused to kill the complainant. While going through the cross-examination and enmity between the parties, it is unsafe to absolutely rely upon the evidence of the complainant to convict the accused because the incident occurred at 14.00 p.m., the complaint came to be filed after four hours, and that on account of political enmity, which is proved on record, the complainant might have been prompted to file the above complaint.

7 This being the Appeal against the order of acquittal and law as to the scope of Appeal against an acquittal is well defined. It is settled that unless and until it is found that the reasons assigned and conclusions arrived at by the Trial Court for the acquittal are perverse and unsustainable in all respects, no interference is permitted in orders of acquittal. We have also gone through the reasons assigned by the Trail Court for the acquittal as narrated by the Trail Court in paragraphs 13 and 14 of the judgment and we come to the conclusion that in any case the reasons assigned by the Trial Court cannot be labelled as perverse or untenable. The reasons assigned by the Trial Court are proper and the conclusions arrived at by the Trial Court from the record and the evidence of the case is plausible and possible. We, therefore, do

not find this appeal meritorious as to call for the interference in this Appeal against the acquittal.

8 In the result, Appeal stands dismissed.

(J. R. VORA, J.)

(M. R. SHAH, J.)

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